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IN THE  
**Supreme Court of the United States**

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October Term, 1964  
No. 807

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RALPH GINZBURG, DOCUMENTARY BOOKS, INC., EROS  
MAGAZINE, INC., LIAISON NEWS LETTER, INC.,  
*Petitioners,*

*vs.*

UNITED STATES OF AMERICA,

*Respondent.*

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**MOTION FOR LEAVE TO FILE BRIEF OF  
LILLIAN MAXINE SERETT AS AMICUS  
CURIAE.**

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Lillian Maxine Serett, author of *The Housewife's Handbook on Selective Promiscuity*, one of the writings involved in the proceedings herein, by and through her counsel, respectfully requests permission to appear as *Amicus Curiae* and to file a brief in support of petitioner's position in the above entitled cause. Consent to the filing of a brief by this *Amicus* was given by counsel for the petitioner. A written request for such consent by counsel for the respondent has been made but, up to the present time, no reply has been received.

Counsel for Mrs. Serett has read the record at bar and has familiarized himself with the arguments presented by the parties therein, and believes there is further and

particular argument needed on behalf of the author of the Handbook. The book involved herein has been deemed "obscene" by the courts below and therefore without the protective guarantees of the Constitution of the United States. Freedom to an author means more than mere freedom of expression; it includes also the right of an author for a chance to be heard. Counsel is convinced that issues of great importance are presented in the cause herein. This issue has to do with the question of censorship, first, as it affects rights guaranteed to *Amicus* by the Constitution of the United States and, second, as it relates to the use of governmental power to impose a censorship on writings dealing with sex and sexual relations and behavior.

It is therefore respectfully requested that the movant be granted permission to file the within brief in support of petitioner's position.

Respectfully submitted,

STANLEY FLEISHMAN,  
*Counsel for Lillian Maxine Serett,  
Amicus Curiae.*

*Of Counsel:*

SAM ROSENWEIN.

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*Petitioners,*

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UNITED STATES OF AMERICA,

*Respondent.*

BRIEF OF LILLIAN MAXINE SERETT AS  
AMICUS CURIAE.

## ARGUMENT.

### I.

The Book, *The Housewife's Handbook on Selective Promiscuity*, Is Entitled to the Protection of the First Amendment Guarantees of the Constitution of the United States.

1. Freedom of expression is, of course, embraced within the guarantees of the First Amendment; and this freedom hinges on the freedom to create and develop ideas. More than an individual right of expression, however, is contained in the guardian provisions of the Bill of Rights; the community's interest in ideas — the public's right to know — is imbedded in the constitutional liberties of speech and press.

Without freedom to discuss "all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of the period" (*Thornhill v. Alabama*, 310 U.S. 88, 102, quoted in *Roth v. United States*, 354 U.S. 476, 488), a self-governing society appears destined for stagnation and decline. Societal issues cannot be resolved without the widest dissemination of points of view; the "thinking process of the community" is vitiated when "heretical" and "immoral" opinions are suppressed. Truth based solely on prevailing opinion is no more than superstition. In short, the guarantees of the First Amendment secure a public purpose as well as a private right.

In the ultimate sense, the social, economic and political problems of organized society resolve themselves into questions of human relations. The complexity of these relations, attested alike by philosophers, religious leaders, statesmen, social and physical scientists, arises out of the nature of man. "Man is an animal that thinks. To be a first-rate human being, a man must be both a first-rate animal and a first-rate thinker." Huxley, *On Art and Artists* (1960) 72. Man's contacts are not only with an outer world, but an inner world of instincts and impulses. It is important to recall, moreover, that in real life "Man" dissolves into an infinite variety of men and women, whose individual psyches are as different as their conscious spirits.

Neither coercion nor ignorance can forever clog the processes of change which take place in the social and psychological spheres frequented by human beings. The alteration of traditional beliefs and expectations, the changes in social, religious and moral codes, are merely

the outer manifestations of the urges of men and women for increasing freedom. The question is not whether there will be change; the challenge lies in avoiding the painful stresses and strains which arise when change is resisted by established institutions. It is in the American experience to meet this challenge by the exercise of reason, by freedom of thought and expression, by the broadest dissemination of information and knowledge. We are profoundly committed to "uninhibited, robust, and wide-open" discussion in the search for truth. *New York Times and Abernathy v. Sullivan*, 376 U.S. 254, 270.

The growth and development of human sexuality, the patterns of sex relations and sex behavior, have significant effect upon the social processes of the community. In matters of sex, there is a profound need for understanding, insight and awareness; yet in no other area has there been so much ignorance and obscurantism. It is impossible to estimate the social damage which has been done by the lack of rational, informed and responsible attitudes to sex.

"Sex, a great and mysterious force in human life, has indisputably been a subject of absorbing interest to mankind through the ages; it is one of the vital problems of human interest and public concern."

*Roth v. United States*, 354 U.S. 476, 487.

How great a concern and interest there are in problems of sex may be discerned from the host of writings on sex, sex relations and sexual behavior appearing in such fields as medicine, biology, physiology, psychology, psychiatry, law, penology, literature, the arts, and many other areas.



The problems of sex are rooted in the sexual function, a function affected by biological, psychological and social factors which result in a marked diversity of sexual activities. These activities, so integral to the individual personality and the social organization, are a major concern to all mankind. See, Frank, *The Conduct of Sex* (1961 pbk). It follows that knowledge of the nature and character of sexual behavior must become available to the maximum number of persons.

"Most men and women and adolescent children, and even pre-adolescent children in their youngest years, face, at times, problems which some greater knowledge of sex would help solve. As in other areas of science, the restriction of sexual knowledge to a limited number of professionally trained persons, to physicians, to priests, or to those who can read Latin, has not sufficiently served the millions of boys and girls, men and women, who need such knowledge to guide them in their everyday affairs."

Kinsey, *Sexual Behavior in the Human Female* (1953) 11.

Nowhere is knowledge of sexual attitudes and sexual behavior more needed than in relation to the human female. For varied reasons, emanating from the patriarchal social organization prevailing at the inception of civilization, women have been compelled to occupy a subordinate status with respect to men. 15 *Encyclopaedia of the Social Sciences*, "Woman, Position in Society"; DeBeauvoir, *The Second Sex* (1953). Aristotle averred that men are by nature superior and therefore they are fit to rule, while women should be ruled. This notion continues to persist in all societal

organizations dominated by men. The result has been that women, who constitute numerically at least half of the human race, have never even essentially succeeded in obtaining equality in the social, political or occupational arenas. Rossi, *Equality Between the Sexes: An Immodest Proposal* in *Daedalus*, Journal of the American Academy of Arts and Sciences (Spring, 1964) 607-652.

This subordinate status of women has resulted in pervasive social wrongs, particularly in a tendency to debase and corrupt the sexual relations between men and women. The myths created by men with respect to women, and which women have in large part been compelled or persuaded to accept, has had unnatural and repressive influence on the sexual life of women. Havelock Ellis, *On Life and Sex* (1957 pbk) 71-78; Albert Ellis, *The American Sexual Tragedy* (1962 pbk). In the area of sex or any other area, it is plain that the "double standard" is no longer acceptable, if human social organization is to be maintained and the dignity and independence of the individual personality safeguarded. In the political, social and economic areas, the claims for equality by women are to some degree being understood. Recognition, however, has come far slower for the claims of women to sexual equality and independence. In order for new traditions and new attitudes to peacefully develop in a society swept by rapid technological and social changes, the human female must obtain a position of independence and equality with the male.

Unless woman obtains initially a knowledge of "her own complex self", and until men and women understand each other "as they are and not as they hope or imagine them to be", the attainment of equality of the

sexes cannot be achieved. Without the removal of long existing fictions and illusions, there is rather the potential danger of deteriorating sexual and social relations. Davis, *The Sexual Responsibility of Woman* (1964 pbk) 3; Kinsey, *Sexual Behavior in the Human Female* (1953) 567, *et seq.* Disastrous mistakes are occurring frequently in sexual relations which vitally affect social interests. The function of a well-ordered society is to see that these mistakes do not occur; it is self-defeating for a community to place every obstacle in the way of rectifying such mistakes. Intelligence and knowledge is needed, and such intelligence and knowledge cannot be obtained without first knowing one's self.

2. Lillian Maxine Serett has written a book of social importance. The Handbook is an attempt to furnish clarity and understanding about the biological, psychological and social elements involved in the fulfillment of woman's function as a complete human being. The author's frank and comprehensive autobiography is of value not only to women but to men as well. The writing helps to demolish many delusions and falsehoods about sexual relations between male and female. The writing is honest, humane and perceptive. The autobiography is a departure from the fantasy and idealized sexual world created by so many writers (see Brown, *Sex and the Single Girl*, and the motion picture based thereon); it compels a fair-minded reader to face up to the objective facts and real experiences involved in the sexual function and sexual behavior of the sexes. The book enlightens, and enlightenment is the source of forward social thought and attitudes.

The autobiography traces the experiences of the author from the age of 3 until the age of approximately

35. The author's origins were humble; her father died when she was 5 years old; her mother was compelled to work long hours; she was generally left with her grandparents. As a result, she appears to have been thrown upon her own resources during her pre-adolescent and adolescent periods. Nevertheless, we learn from the autobiography that she attended college at an early age, at first planning on obtaining a degree in mathematics but later deciding to be a teacher. She took courses in psychology and education. In the I. Q. tests, she was one of the top 5 (pp. 53-54). She took courses in child psychology, where her instructor spoke on the sexual relations of married persons, and the necessity for a woman not to let her husband know (in order to satisfy his male ego) that she was dissatisfied with her sexual life. She thought to herself:

"This kind of 'kindness' to a man would only lead to my thinking he was less than a man. And in the end it would turn out that it was not kind after all." (P. 55).

Throughout her three marriages, she found herself compelled to earn a livelihood to support her husbands and children. She worked in a shipyard as an electrician. Later, she built up a business in architectural drafting and acquired a fairly good income. Still later, she became employed in the publishing business. Thereafter, she acquired some training as a counselor and went into business with a local businessman. They founded an organization to teach personnel — efficiency courses and communication courses, and to do private counseling (p. 168). This business becoming unsuccessful, she began to

build up a printing business. Thereafter, she turned to writing, particularly the Handbook and the operation of a publishing and printing establishment.

In a preface to the Handbook, Dr. Albert Ellis states:

"In the most simple, lucid, down-to-earth, yet nonpornographic terms she has given us descriptions of a highly sexed woman's thoughts, feelings, and reactions — descriptions that are (as yet, alas) pricelessly rare. How she felt before engaging in sex activities; what her husbands or lovers said to her before, during, and after these sex acts; how she thought and felt in the midst of and subsequent to copulative engagements — these are the questions that Mrs. Anthony has chosen to consider and answer. And answer them fully, openly, and with startling insight, she most certainly has." (P. 8).

In a review of the Handbook, by Dr. William J. Bryan, Jr., it was stated that the writing was

"a brilliant and skillfully written autobiography of a woman who through her own searching analyses has been able largely to free herself from the guilt which permeates the great majority of American adult women (and to a lesser extent, men) on the subject of their sexual behavior. . . . The importance in the publication of this book as I see it lies, by and large, together with the importance of the Kinsey Report. That is to say, books like these show us not necessarily what the American female should do or should not do, but what she *is doing*." (JA 16-17).

In another review for the *Journal of Human Relations*, Dr. Frumkin stated that

"This book is a profound personal document, a social psychological autobiography, as well as a treatise on sex education. . . . It is a work inspired by lessons learned by human suffering, and inspired by and full of the love and warmth that sometimes are created in the most tragic and deleterious surroundings." (JA 18-19).

At the trial, Dr. Charles G. McCormick, a clinical psychologist with an extensive educational background (JA 186-187), testified that he had read the *Handbook*; that it gave a realistic picture of a woman's attitude and activities with respect to sex; that the writing was supported by a responsible attitude on the part of the author (JA 206, 210-211). The Reverend Hilsheimer, a pastor and spiritual counselor with broad education and practical experience (JA 273-277), testified that he had read the *Handbook* and used the work in his pastoral counseling and formal psychological counseling (JA 289). Reverend Hilsheimer stated that he had used the writing particularly in cases of married women as a means of reducing and ventilating their sense of shamefulness, their sense of debilitating guilt, and their sense of prurience which had developed out of their particular trainings and experiences. He stated:

"Now, it is necessary for the pastoral counselor and for the psychologist if he is going to be responsible to his youth and to his parents to give them a more realistic view of the world in which they live and the problems that they are going to face and to fit them with the practical, detailed,

immediate, realistic and unshamefully communicated knowledge about the things which are most important to them. This to me is the great value of this book. It says, 'You are not alone. This is the experience of many, many people', and it gives a certain amount of hopefulness to it. It is in my mind theologically quite an innocent book. There is no sense of shame involved in it. There is no sense of prurience involved in it. There is no sense of wallowing in sexuality simply for its own sake but it is a simple, straightforward recount of a fairly unhappy history of a fairly typical woman, and I can say based on my clinical experience and the experience of my colleagues and the literature that this book is not drawn far from the average middle American experience whether involved with one or several partners." (JA 291-292).<sup>1</sup>

The Handbook therefore is a valuable document, among other writings, in the continual developing studies of human sexual behavior and its basic causes. In dealing with problems of pre-marital and extra-marital relations, in pre-adolescent, adolescent and adult sexual development, it is of invaluable aid in helping to resolve sexual problems of married and unmarried persons. The

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<sup>1</sup>A series of affidavits presented by the petitioner in support of a motion to dismiss the indictment (JA 13-146) were stricken from the motion by the trial court (JA 151). It is apparent, however, from a reading of the overwhelming majority of the statements contained therein from different physicians, psychiatrists, psychologists and ministers, that the Handbook was considered an important contribution to the understanding of human behavior; that the work was informative and instructive in an area of knowledge vital to individual happiness; that it was helpful in dispelling ignorance in an area of difficult sexual adjustments.



Handbook can be a source of education about sexual phenomena which can be helpful to both individuals and society.

Mrs. Serett states in the Handbook that in her adolescent years, she turned to books on sex which told her that marriage was a partnership. "I like that. That's the way it should be. Each partner should have equal rights. When I get married that's the way it would be." (P. 50). This is the philosophy by which the author has lived. If her life is not the way her detractors would have lived it, it is nevertheless a fact that the honest and sincere portrayal of that life will be of illuminating aid in helping others to solve similar problems in their own way.

3. That the Handbook does not substantially exceed the limits of candor in description of sex can hardly be disputed. In 1930, Mary Ware Dennett's pamphlet "The Sex Side of Life", a frank and informative writing on sex instruction for children, was held constitutionally protected by the courts. *United States v. Dennett*, 39 F. 2d 565 (C.A. 2 1930). Two similar candid works by Dr. Marie C. Stopes also received the protection of the law. *United States v. One Obscene Book Entitled "Married Love"*, 48 F. 2d 821 (S.D. N.Y. 1931); *United States v. One Obscene Book Entitled "Contraception"*, 51 F. 2d 525 (S.D. N.Y. 1931). The works of Havelock Ellis, especially his large treatise entitled *Psychology of Sex*, published in the early 1900's, has been widely distributed. There is nothing contained in the Handbook



which is not also contained in even more candid detail in the Kinsey Report on *Sexual Behavior in the Human Female*, published in 1953, and which has received a wide general distribution. The Kinsey Report not only deals with pre-adolescent and adolescent sexual development but with problems of auto-eroticism, marital coitus, homosexual responses and with the anatomy, physiology and psychology of sexual response and orgasm. The work of the noted French writer, Simone deBeauvoir, *The Second Sex*, is a serious all-inclusive and uninhibited work on woman's place in the world. See, Chapter I, entitled "The Data of Biology"; Chapter II, "The Psychoanalytic Point of View"; Chapter XI, "Myth and Reality". Maxine Davis, a noted writer in the field, in her book entitled *The Sexual Responsibility of Woman*, discusses candidly such problems in sexual relations as the physiology of sex in woman, the art of sexual satisfaction, the technique of sexual satisfaction, the sexual nature of man and woman, and the myth of frigidity. Dr. Albert Ellis, in *The American Sexual Tragedy*, devotes chapters of his work to the male-female differences in sexual responses. Drs. Phyllis and Eberhard Kronhausen have written a book entitled *The Sexually Responsive Woman*, published in 1964. The book is a forthright discussion on the difficult problem of women's sexuality. The writing discusses in frank detail the nature of the female sex organs and a detailed revelation of interviews with four female informants, including a "more than average housewife", a "sexual sophisticate", a "married Lesbian" and a "doctor's wife". Pre-marital and extra-marital relations, auto-eroticism, the anatomy and sociology of orgasm and questions of oral sex are candidly developed in discussions with the aforesaid persons.

Neither in language nor description does the Handbook exceed what now appears frequently in marriage manuals generally distributed to the public. See, for example, Stone, *A Marriage Manual* (1952); Van de Velde, *Ideal Marriage* (1930). See also, Burton (Trans.), *Perfumed Garden*; Burton (Trans.), *Kama Sutra*. See also, Frank Harris, *My Life and Loves* (Grove Press, 1963).

The courts have also taken notice of the greater extent of tolerance or discussion of matters of sexual relations and behavior. Thus, in *Grove Press, Inc. v. Christenberry*, 276 F. 2d 433 (2 Cir. 1960), Chief Judge Clark, holding that the depiction of sex in *Lady Chatterley's Lover* did not exceed contemporary community standards, stated:

"In actuality his thesis here is only that pressed continuously in the modern marriage-counseling and doctors' books written with apparently quite worthy objectives and advertised steadily in our most sober journals and magazines. . . ." 276 F. 2d, at 438.

In *Haldeman v. United States*, decided January 13, 1965 by the Tenth Circuit, still unreported, there were involved eight paperback booklets or pamphlets written by Dr. D. O. Cauldwell.<sup>2</sup> The Court of Appeals, while declaring that the writings contained "revolting,

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<sup>2</sup>The titles of the booklets were: "Questions and Answers Involving Sexual Ethics and Sexual Esthetics"; "Questions and Answers on Sex and the American Attitude"; "Questions and Answers on Sex Physique Disparity"; "Questions and Answers on the Sex Life and Sexual Problems of Homosexuals of Both Sexes"; "Questions and Answers About Oragenital Contacts"; "Questions and Answers about Cunnilingus"; "Questions and Answers on Undinism"; and "Revelations of a Sexologist".

nauseating, filthy and disgusting incidents", held nevertheless that the discussion contained in the booklets was no different from the discussion found in medical, scientific, educational or general informational matter.

"No one contends that the conditions and experiences referred to in the booklets do not exist or continuously confront the medical profession, law enforcement officers, and society, with perplexing problems. The record discloses without contradiction that the forms of sexual behavior described are common problems about which there is considerable literature, including discussions in many text and reference books."

The Court held that the books did not exceed contemporary community standards and were not utterly without social importance.

At the trial, Dr. Charles McCormick, testifying on behalf of petitioner herein, stated that in his opinion the predominant effect of the Handbook is not to create in the average person a morbid or shameful desire or longing with respect to sex (JA 206); that the writing was not morbid and would not tend to corrode or to turn a person against himself in the process of reading the contents (JA 210). Dr. Peter G. Bennett testified that the book would not appeal to the prurient interests of an average mature person (JA 264). Reverend Hilsheimer's testimony (JA 273, *et seq.*) was, of course, to the same effect.

In its formulation of the meaning of "prurient interest" as a shameful or morbid interest in sex, the American Law Institute in 1957 (Tent. Draft. No. 6) premised the definition as flowing from the "psychosex-

ual tension" which arises in the ordinary person in our society "caught between normal sex drives and curiosity, on the one hand, and powerful social and legal prohibitions against overt sexual behavior" (Tent. Draft No. 6, p. 10). However, the so-called social and legal prohibitions against overt sexual behavior are in the process of change. The discussion by the American Law Institute on "Sexual Offenses", in its Tentative Draft No. 5, makes this clear. The recommendations of the American Law Institute was generally against the punishment of illicit sexual relations, except when open and notorious or quasi-incestuous. Not only was there a frank and open discussion in the American Law Institute report on such matters as adultery, bigamy and polygamy, incest, rape, seduction, sodomy, and other related matters, but there was the recommendation to exclude from the criminal law "all sexual practices not involving force, adult corruption of minors or public offense" (Tent. Draft No. 5, p. 277). The Institute stated: "No harm to the secular interests of the community is involved in atypical sex practice in private between consenting adult partners." See also, Cantor, "Deviation and the Criminal Law" in 55 *The Journal of Criminal Law, Criminology and Police Science* (1964) 441.

In the light of this far more tolerant, open and advanced discussion on social and legal attitudes toward sex and sexual behavior, it is submitted that a book like the Handbook here involved does not appeal to any shameful or morbid interest in sex. The matters discussed in the Handbook are now candidly and openly discussed in all areas of society and, as heretofore been shown, the tolerance and desire for discussion by the community in the areas of sex, sexual relations and

sexual behavior are far greater than those of past decades.

4. The case below appears to have been tried and decided upon the theory that the Handbook was offensive "to the most liberal morality" (JA 366) and might in addition become available for children, to their detriment. On the latter issue, without regard to the merits of the contention, this Court, in *Butler* and *Jacobellis*, has settled the question that the standards for judging the constitutional protection of material distributed generally to the adult population cannot be measured by writings fit for use in a child's library.

On the issue of the "morality" of the Handbook, it should be initially noted that the following colloquy occurred at the trial:

"Q. Mrs. Serett, is this a work of fiction? A. No. I have lived every single minute of it." (JA 227.)<sup>3</sup>

The Handbook is an honest, truthful depiction of a person's life. It may compel the reader to realign his moral concepts, but it is not an immoral book. It may be difficult to look at the experiences as the author does, to be virtually the author, reading the book, but for these very reasons the book challenges the reader not to be judgmental, but to think. This Court has stated: "Truth may not be the subject of either civil or criminal sanctions where discussion of public affairs is concerned. . . . For speech concerning public affairs is more than self ex-

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<sup>3</sup>The author was not cross-examined by the Government.

pression; it is the essence of self government." *Garrison v. Louisiana*, October Term, 1964, No. 4 (Nov. 23, 1964), 33 U.S. Law Week 4019, 4022. It is an interesting commentary that the Court of Appeals below, in comparing the Handbook with John Cleland's *Fanny Hill* (see, *Larkin v. G. P. Putnam's Sons*, 14 N.Y. 2d 399, 252 N.Y.S. 2d 71, .... N.E. 2d .... (1964)), ventured the opinion that the latter writing might be constitutionally protected because of its slight literary value and insight into the life and manners of mid-18th Century London. *Fanny Hill* is of course a male fantasy put into the mind of a woman. It is ironic that a book is suppressed when an author professes to tell the truth about her sexual life, while a writing which is an obvious fantasy is rightly granted constitutional protection as a work of some importance.

If sex and obscenity are not synonymous, it should also be recalled that obscenity and immorality are entirely distinct from each other. It is possible for persons to maintain doctrines as to marriage, the relation of the sexes, the nature and limits of the rights of property, etc., which would be regarded as highly immoral by most people and, yet, clearly there would be commission of no crime.

"It is contended that the State's action was justified because the motion picture attractively portrays a relationship which is contrary to the moral standards, the religious precepts, and the legal code of its citizenry. This argument misconceives what it is that the Constitution protects. Its guarantee is

not confined to the expression of ideas that are conventional or shared by a majority. It protects advocacy of the opinion that adultery may sometimes be proper, no less than advocacy of socialism or the single tax. And in the realm of ideas it protects expression which is eloquent no less than that which is unconvincing."

*Kingsley Int'l Pic. Corp. v. Regents of N.Y.U.*,  
360 U.S. 684, 688.

### Conclusion.

The Handbook is a work of social importance. It does not exceed the limits of customary freedom of expression nor does it appeal to a prurient interest. It is a work of candor and truth. It raises questions about the viability of sexual life that are vitally important. Suppression of such a writing would not only be contrary to law and the Constitution, but a social loss in the ever-ending struggle for men and women to understand themselves and each other.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

STANLEY FLEISHMAN,  
*Counsel for Lillian Maxine Serett,*  
*Amicus Curiae.*

*Of Counsel:*

SAM ROSENWEIN.